IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 826 of 1999()

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CRA.137/1998 of SPL.COURT SPE/CBI-II & IV ADDL.SESSIONS COURT, ERNAKULAM
CC.21221212/1993 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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REVN. PETITIONER:

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KASTHURI V. PRABHU, KALATHIPARAMBIL HOUSE,
KARANAKODAM, KOCHI - 682 025. REPRESENTED BY POWER OF ATTORNEY HOLDER P.R.GIRIRAJA PRABHU RESIDING IN DO. DO. DO.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

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1. SUBHADRA PRABHU, W/O.RAMANADA PRABHU, XI/V/1296, POURNAMI, ASHOKA ROAD, KALOOR, KOCHI - 17.

2. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJED ALI.
SRI.DINESH R.SHENOY

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**A.K. Basheer, J.**

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**Crl.R.P. No. 826 of 1999**

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**Dated this the 28th day of November, 2007.**

**O R D E R**

After hearing the learned counsel for the parties at length, I have no hesitation to hold that the order passed by the learned Sessions Judge remanding the case to the trial court cannot be sustained.

2. Learned counsel on either side fairly conceded that the observation of their lordships of the Supreme Court in Mrs.Githa Hariharan v. Reserve Bank of India (1999 (2) SCC 228) which has been extracted by the learned Judge in the appellate order has no bearing at all on the issue involved in this case. Of course learned counsel on both sides have advanced arguments touching upon the question whether or not the respondent/accused could have been held liable under Section 138 of the Act, especially since she had drawn Ext.P1 cheque on the account of a minor, in her capacity as guardian. The provisions contained in Section 11 of the Hindu Minority and Guardianship Act as well as Section 28 of the Negotiable Instruments Act were also attempted to be pressed into service.

2. Learned counsel for the complainant has laid heavy emphasis on the plain and simple language used in Section 138 and has contended that the drawer of a cheque has to be held liable if the cheque drawn by him/her is dishonoured due to insufficiency of funds in the account. Both sides have invited my attention to the

self contradictory stands taken by the parties in the statutory notice and reply thereto. I refrain from making any observation on the merit of the rival contentions. In my view, these are all questions which have to be decided by the appellate court itself.

4. In the facts and circumstances of the case I am satisfied that the order of remand was totally unwarranted and uncalled for. The appellate court ought to have considered the issues raised before it in the light of the evidence adduced by the parties. Therefore the order of the appellate court remitting the case back to the trial court is set aside. The appellate court shall decide the appeal on its merit after hearing the parties. It is made clear that I have not considered the merit of any of the contentions raised by the parties.

5. Since this is a very old case, the appellate court shall make an earnest endeavour to dispose of the appeal as expeditiously as possible at any rate within two months from the date of receipt of a copy of this judgment. The Registry shall send back the records to the appellate court forthwith.

Crl.R.P. is disposed of in the above terms.

**A.K. Basheer**
**Judge.**

**an.**

**A.K.Basheer, J.**

**Crl.R.P.826 of 1999**

**ORDER**

**28/11/2007.**